

ESTTA Tracking number: **ESTTA513267**

Filing date: **12/27/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Boston Red Sox Baseball Club Limited Partnership
Granted to Date of previous extension	12/30/2012
Address	Fenway Park 4 Yawkey Way Boston, MA 02215 UNITED STATES

Attorney information	Lisa M. Willis Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES trademark@cll.com, jmn@cll.com, lmw@cll.com Phone:212-790-9200
----------------------	---

### Applicant Information

Application No	85350447	Publication date	07/03/2012
Opposition Filing Date	12/27/2012	Opposition Period Ends	12/30/2012
Applicant	City of Deer Park, Texas City Secretary 710 E. San Augustine Pasadena, TX 77536 UNITED STATES		

### Goods/Services Affected by Opposition

Class 016. First Use: 1993/01/01 First Use In Commerce: 1993/01/01 All goods and services in the class are opposed, namely: Brochures, booklets, and teaching materials to instruct citizens and provided safety information regarding shelter in place and chemical release
---

### Grounds for Opposition

Other	Please see attached pleading.
-------	-------------------------------

Attachments	WALLY and Design - Lt. to Commissioner re Notice of Opposition.pdf ( 1 page )(68778 bytes ) WALLY and Design - Notice of Opposition.pdf ( 5 pages )(27256 bytes )
-------------	--

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/Lisa M. Willis/
Name	Lisa M. Willis
Date	12/27/2012



Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036

(212) 790-9200 Tel  
(212) 575-0671 Fax  
www.cll.com

December 27, 2012

**By Electronic Filing**

Commissioner for Trademarks  
Attn: TTAB  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Boston Red Sox Baseball Club Limited Partnership  
Notice of Opposition Against  
City of Deer Park, Texas  
Application to register WALLY and Design  
Ref. No. 21307.026

---

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 85/350,447 published in the Official Gazette on July 3, 2012. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Lisa M. Willis/  
Lisa M. Willis

Enclosures

cc: Ms. Diane Kovach (w/encs.)  
Mary L. Kevlin, Esq. (w/encs.)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/350,447  
Filed: June 20, 2011  
For Mark: WALLY and Design  
Published in the Official Gazette: July 3, 2012

-----X	
BOSTON RED SOX BASEBALL CLUB LIMITED :	Opposition No.
PARTNERSHIP,	:
Opposer,	:
v.	:
CITY OF DEER PARK, TEXAS,	<b><u>NOTICE OF OPPOSITION</u></b>
Applicant.	:
-----X	:

Commissioner for Trademarks  
Attn: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposer, Boston Red Sox Baseball Club Limited Partnership ("Opposer"), a  
Massachusetts limited partnership with offices at Fenway Park, 4 Yawkey Way, Boston, MA  
02215, believes that it will be damaged by registration of the WALLY and Design mark shown



here: ("Applicant's Mark") in International Class 16 for "Brochures, booklets,  
and teaching materials to instruct citizens and provided [sic] safety information regarding shelter  
in place and chemical release" as shown in Application Serial No. 85/350,447 (the

“Application”), and having been granted extensions of time to oppose up to and including December 30, 2012, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned BOSTON RED SOX MAJOR LEAGUE BASEBALL club.

2. Since long prior to June 20, 2011, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used the names or marks WALLY, WALLY THE GREEN MONSTER, and other WALLY-formative marks such as WALLY’S WORLD, and/or various depictions of the Club’s mascot WALLY THE GREEN MONSTER, alone or with other word, letter and/or design elements (“Opposer’s WALLY Marks”), in connection with baseball games and exhibition services and mascot services, and a wide variety of goods and services, including, but not limited to, books, posters, photographs, lithographs, pictures and prints, booklets, educational materials and services, apparel, toys and dolls.

3. Opposer owns U.S. federal registrations for Opposer’s WALLY Marks in International Classes 25 and 41, namely, Registration Nos. 3,797,632 and 3,801,204.

4. Since long prior to June 20, 2011, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer’s WALLY Marks, including, but not limited to, baseball games and exhibition services and mascot services, and a wide variety of goods and services, including, but not limited to, books, posters, photographs, lithographs, pictures and prints, booklets, educational

materials and services, apparel, toys and dolls, and have offered such goods and rendered such services in commerce.

5. As a result of the sales and promotion of its goods and services bearing or offered in connection with Opposer's WALLY Marks, Opposer has built up highly valuable goodwill in Opposer's WALLY Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On June 20, 2011, Applicant filed the Application for Applicant's Mark for "Brochures, booklets, and teaching materials to instruct citizens and provided safety information regarding shelter in place and chemical release" in International Class 16.

7. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's WALLY Marks.

8. Applicant's Mark, which is for a mascot character named WALLY, the same as Opposer's mascot character, so resembles Opposer's WALLY Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Lisa M. Willis (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York  
December 27, 2012

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.  
Attorneys for Opposer

By: /Lisa M. Willis/

Mary L. Kevlin  
Richard S. Mandel  
Lisa M. Willis  
1133 Avenue of the Americas  
New York, New York 10036  
(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 27, 2012, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Attorney and Correspondent of Record, Jim G. Fox, Esq., Dover & Fox, P.C., 5003 College Park Dr, Deer Park, Texas 77536-6361.

/Lisa M. Willis/

Lisa M. Willis